HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 1058 of 2004
Reserved on 7.5.2007
Date of Decision:14.5.2007

Bhim Sen Dutta ……. Petitioner.

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versus

Himachal Gramin Bank & another …….. Respondents.

***Coram***:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

***Whether approved for reporting? Yes***

For the petitioner : Mr. Surinder Sharma, Advocate.

For the respondents : Ms. Devyani Sharma, Advocate

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**Sanjay Karol, J.**

Petitioner has, inter alia, assailed the impugned orders dated 3rd November, 2003 (Annexure PQ) on various grounds including that the same is not a speaking order as was required to be passed in terms of the directions given by this Court in CWP No. 155 of 1999.

Without going in to the merits of the matter as also the other grounds raised by the petitioner assailing various orders passed by the respondents, the present writ petition is being considered and disposed of on the limited ground, as to whether the impugned order dated 3rd November, 2003, is a speaking order in compliance of the orders dated 30th August, 2003 passed in Civil Writ Petition No. 155 of 1999.

***Whether reporters of local papers may be allowed to see the judgment?***
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Operative portion of the order dated 30th August, 2003, is reproduced as under:

> "In view of the fact that the statutory appeal preferred by the petitioner has not been disposed of by the Competent Authority, the present writ petition is allowed. The appellate order as at Annexure –PL is set aside and the appeal is remanded for disposal in accordance with law by the Competent Authority, namely, the Board of Directors of the Bank. Such Board of Directors shall dispose of the appeal within eight weeks from today by ***passing a speaking order thereon***. While hearing the appeal, the Board of Directors shall afford an opportunity to the petitioner of being heard. No order as to costs.
>
> Dasti copy on usual terms. "

After giving adequate opportunity to the petitioner, respondent No.2 has passed the impugned order dated 3rd November, 2003, disposing of the appeal filed by the petitioner in terms of the following order :-

> "Your appeal dated 24.7.1998 placed before the Board in its meeting held on 22.10.2003. After your personal hearing before the Board, Directors opined as under:-
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> - No evidence for labeling Enquiry Officer as biased has been given. Hence, Enquiry Officer cannot be treated as biased.
> - Letters for summoning the witnesses were issued.
> - Enquiry Officer was advised to complete the enquiry proceedings in three months.
> - Enquiry Report was supplied only after its completion. Interim proceedings were supplied on daily basis.
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> Hence, Board unanimously resolved to uphold the Disciplinary Authority decision dated 25.06.1998 as the Disciplinary Authority had passed the order of dismissal after properly evaluating the entire material on record and facts.
>
> This is for your information."

During the course of hearing, the respondents have tried to justify the order by relying upon the minutes of the Board of Directors

meeting held on 22nd October, 2003 (Annexure R1). For the purpose of appreciation, the Minutes in its entirety are reproduced as under:

"**ITEM NO. 33: <u>APPEAL OF SH. B. S. DUTTA (DISMISSED EMPLOYEE)</u>**

Shri B. K. Dutta (sic), dismissed Clerk / Cashier, B.O. Baijnath, appeared before the Board for personal hearing as per Hon'ble High Court order dated 30/8/2003. Board asked him to present his case in brief.

Shri B. K. Dutta (sic) first of all told that in Bank fraud of Rs.1.55 lac detected on 10/4/1998, FIR lodged by the then General Manager, he remained in policy custody, enquiry was not fair as there was no fair trial of enquiry, Enquiry Officer was biased, he produced list of some witnesses but Enquiry Officer did not summon any of those witnesses. He sought the help of legal practitioner as Presenting Officer was Law Graduate, but he was denied the services of lawyer. Enquiry Officer Shri K. S. Manchanda was appointed as Enquiry Officer for three months. He had worked in the Incumbency of Shri R. P. Gupta and Ajay Sharma but both of them were never called by the Enquiry Officer for cross examination. Cash remained in the joint custody, Shri R. P. Gupta, the then Manager, who was penalized in the case got promotion on future date. Enquiry Report of Shri R. P. Gupta was not made available to him for his perusal. Even his enquiry report in the first stage was not made available to him, enquiry report prepared in consultation with Management in second stage was made available to him. His defence witnesses were under the control of Chairman. He informed the Board that charges were vogue. In his earlier personal hearing dated 20/6/1998, the Disciplinary Authority, Chairman did not allow him to speak on merits. In the end, he said that he is ready to compensate the loss occurred to the Bank, although he has not been at any stage involved in embezzlement of cash worth Rs.1.55 lacs and he may be put in the lower stage of fitment.

Board after hearing his case was of the view that:

1. No evidence for labeling Enquiry Officer as biased has been given. Hence, Enquiry Officer cannot be treated as biased;
2. Letters for summoning the witnesses were issued;
3. Enquiry Officer was advised to complete the enquiry proceedings in three months;
4. Enquiry Report of Shri R. P. Gupta cannot be supplied to Shri Dutta.
5. Enquiry Report is supplied only after it is completed. Interim proceedings are supplied on daily basis.

Hence, Board unanimously resolved to uphold the Disciplinary Authority decision dated 25/6/1998 as the Disciplinary Authority had passed the order of dismissal after properly evaluating the entire material on record and facts. During personal hearing before the Board, his denial is nothing but treacherous attempt to mislead the Appellate Authority (i.e. Board)."

Perusal of the appeal (PK) would indicate that several grounds raising the questions of facts and law have been taken by the petitioner, some of which are ; (i) refusal by the Disciplinary Authority to allow the petitioner to engage a lawyer thereby seriously prejudicing him; (ii) continuation of the Enquiry Officer even after expiry of his tenure; (iii) withholding of material documents including the report of the parallel inquiry; (iv) not properly summoning the defence witnesses; (v) granting inadequate time for preparation of the case; (vi) non supply of statements of material witnesses; (vii) bias on the part of the Disciplinary Authority.

Perusal of the Minutes of the Board of Directors would show that sufficient reasons have not been given while deciding the contentions raised by the petitioner. Even the contentions raised by the petitioner during the course of the hearing have not been adverted to while passing the order.

In my view, the respondents have failed to pass a speaking order considering the entire material on record including the grounds raised by the petitioner in his appeal.

The High Court had directed the respondents to consider and decide by a speaking order. Obviously, there was an obligation on the respondents to have passed a speaking order and assigned reasons for arriving at its findings which is a part of the principles of natural justice. In this view of the matter, the insufficiency of reasons is a ground in itself for allowing the writ petition. Reasons are absolutely necessary to enable the petitioner to assail the impugned order.

For the aforesaid reasons, the impugned order dated 3rd November, 2003 alone, is set aside on a limited ground. During the course of hearing, learned counsel for the petitioner stated that his client undertakes to appear before the Board of Directors on the day of hearing as may be fixed by the respondents and that he shall not take any adjournment for whatever reasons, and also argue the appeal on the basis of the material already on record. This undertaking of the petitioner is being taken on record.

The respondents are directed to issue notice to the petitioner fixing the date and time of hearing by the Appellate Authority. The respondents shall decide the appeal within a period of two weeks from the said date of hearing by a speaking order.

Needless to point out that the respective contentions raised by the parties on merits, are not being decided and it shall be open for the parties to take all pleas as may be available to them, as the present writ

petition is decided on a limited ground. The petition is allowed in terms of the aforesaid order.

(Sanjay Karol)
Judge.

May 14th, 2007
(rana)